JOSEPH SINGARAM PILLAY

v.

MALAYSIAN BAR

HIGH COURT, KUALA LUMPUR
DATO' ANUAR BIN DATO' ZAINAL ABIDIN J.
[ORIGINATING SUMMONS NO. S1-24-286-93]
2 JULY 1993

LEGAL PROFESSION: Withholding of issue of Sijil Annual - Reasons for withholding - Whether defendant made enquiries before withholding the issue of Sijil Annual - Whether plaintiff given opportunity to exculpate himself - Whether defendant exercised its powers correctly.

The defendant refused to issue the plaintiff with a Sijil Annual for the year 1993 on the grounds that the plaintiff had failed to comply with the provisions of the Legal Profession Act 1966 (the Act) in that he had failed to produce the accountants Certificate for his branch office.

The plaintiff claimed that in 1990 he had associated with a lawyer in Kuala Lumpur which association had ceased in 1991. The plaintiff stated that he was never a signatory to either the office or the clients' account of the Kuala Lumpur office and disclaimed any definite arrangement of partnership contending that each lawyer minded his own practice alone.

The plaintiff applied for an order directing the defendant to issue the Sijil Annual to him and in the interim obtained an *ex parte* injunction against the defendant. The defendant applied to set aside the injunction on the grounds that it was contrary to law in that it fettered the hands of the defendant in the lawful pursuit of its functions and objectives.

Held:

[1] Where a statute has provided a full right to appeal to a Court against an official decision, as in this case, the Court should be able to apply its own view of the merits provided it has due regard to the opinions of the authority which made the first decision. In all cases of depriving a man of his livelihood or in frustrating legitimate expectation, fairness is of paramount importance.

[2] The defendant did not consider the reasons for the non-production of the accounts for the branch office and did not consider the plaintiff's request with the care it deserved although it involved him being deprived of his livelihood indefinitely causing him loss of his career.

[3] The evidence showed that the plaintiff has an unblemished character as a professional and there was no complaint from any source involving him. There was also no suggestion of his involvement in the affairs of the Kuala Lumpur lawyer. The Act and The Solicitors Account Rules 1990 gives the defendant wide discretionary power to exempt the plaintiff from the strict requirements of the rules relating to submission of accounts.

[4] The withholding of the Sijil Annual would not serve anyone's interest and would cause injustice. In any event the effect of withholding the Sijil Annual is equivalent to suspending a lawyer which is the prerogative of the Chief Justice only at the instance of the Bar.

[5] The injunction being an equitable remedy, the Court would invoke it even against statutory authorities unless forbidden by the legislature. The injunction was not a validation of wrongful acts of the plaintiff or of anyone else but was intended to be an order against the defendant from alleged abuse of power in the desperate circumstances claimed by the plaintiff in his *ex parte* application. In any event the injunction was of absolutely temporary nature and there was no instance of any prejudice caused at all.

[Defendant directed to issue Sijil Annual for the year 1993 to the plaintiff. Injunction directed to dissolve upon the issue of the Sijil Annual. Parties to bear their own costs].

Cases referred to:

Sagnate Investment Ltd. v. Norwich Corpn. [1971] Court of Appeal 614 ***(refd)***

British Oxygen Co. Ltd. v. Minister of Technology [1971] AC 610 ***(refd)***

Lau Liat Meng v. Disciplinary Committee [1967] 2 MLJ 141 ***(refd)***

Majlis Peguam Malaysia & 3 Ors. v. Joseph Au Kong Weng [1993] 2 CLJ 417 ***(refd)***

Legislation referred to:

Legal Profession Act 1976, ss. 34, 98 & 99
Solicitors Account Rules 1990

For the plaintiff - C.K.G. Pillay (S. Kanawagi with him); M/s. C.K.G. Pillay & Partners

For the defendant - C. Abraham (Maidzuara Mohammed with him); M/s. Shearn Delamore & Co.

JUDGMENT

Anuar bin Dato' Zainal Abidin J:
On 13 May 1993, the Court heard the above O.S. praying that the defendant be directed to issue forthwith the plaintiff a Sijil Annual for the year 1993. On the same occasion, the Court heard an application by the defendant that the interlocutory injunction against it granted on 5 April 1993, he set aside followed by other consequential reliefs. Both matters were heard together for the sake of expediency and as the facts and affidavits are closely interlinked. Upon conclusion of the hearing I reserved judgment to study in depth the facts and law involved in view of the importance of the decision to the legal profession and the case being first of its own kind to my knowledge.

Subsequent to the hearing on 13 May 1993, Counsel for the defendant sent to me a copy of the Supreme Court decision in Civil Appeal No. 02-371-91. (See *Majlis Peguam Malaysia & 3 Ors. v. Joseph Au Kong Weng* [1993] 2 CLJ 417). With due respect to the learned Counsel, I cannot derive much assistance from the said judgment which relates to a different subject and which appears as a guide only for the interpretation of ss. 98 and 99 of the Legal Profession Act as indicated in the last paragraph page 29 of the said judgment.

First, in the sequence of events, I will deal with the plaintiff's prayer followed by that of the defendant's.

The plaintiff was admitted to the Malaysian Bar as an advocate and solicitor on 25 April 1987. Since then, he has been practising as an advocate and solicitor in Johor Bahru in various capacities without interruption. In January 1990, he decided to associate with another senior lawyer, Zaibuddin Ambak in Kuala Lumpur. The true nature and extent of such association are in dispute except that both lawyers used the firm name of Zaibuddin Ambak and Associates.

In December 1991, the association between them ended, the plaintiff changing his style of practice to J. S. Pillay and Co.

On 30 November 1992, the plaintiff applied to the defendant for issue of Sijil Annual in question in the prescribed manner enclosing his "own" office accounts in Johor Bahru. There were some queries by the defendant regarding Kuala Lumpur office of the "firm". In response, the plaintiff submitted a statutory declaration on 12 February 1993. He also had occasion to forward a redesignated Accountant's Certificate modifying its title but not the contents at all, to comply with the formal requirements made by defendant's secretariat.

Finally on 18 March 1993 the defendant wrote to the plaintiff a short letter to the effect that the defendant was of the view that the plaintiff's application for Sijil Annual cannot be considered until he "complies" with the requirements of the Act and produce the Accountant's Certificate of his "branch office". The defendant also pointed out to the plaintiff the latter's right to apply to Court under the Act above. In consequence, leading to the present O.S.

In the main, the contention of the plaintiff is that the defendant did not make appropriate enquiries before withholding or non-issuing the Sijil Annual. He complained that he was never given the opportunity to exculpate himself before being deprived of his livelihood. It was not easily possible for him to produce the accounts of Zaibuddin Ambak who was suspended from practice by the Chief Justice at the instance of the Bar without the plaintiff being aware of the situation leading to such action. The plaintiff also averred that he has, at all material times, done his best to trace and persuade his colleague to submit the accounts but was unlikely or impossible to succeed.

Insofar as the plaintiff is concerned, he has accounted for all moneys received from his clients and that there is no complaint against him since his practice. His Counsel relies on common law indicating individual liability of each lawyer in such situation. In reply, the defendant averred that the plaintiff was a partner of the firm Zaibuddin Ambak & Associates by his own admission at earlier stage. The defendant did not rebut or question the plaintiff's statement on oath that he was not aware of any action in Kuala Lumpur which his associate took and he was not in a position to be so aware.

At the hearing of this action, the plaintiff relied on two affidavits sworn on 5 May 1993 (Encl. 1) and 10 May 1993 (Encl. 2) but they are verbose and irrelevant in many instances for my decision.

The points of law involved are what should be the guiding principles before I exercise my jurisdiction one way or the other.

Where a statute has provided a full right of appeal to a Court, as in this case, vide s. 34 of the Act against an official decision, the Court should be able to apply its own view of the merits provided it has due regard to the opinions of the authority which made the first decision. Dictum in *Sagnate Investment Ltd. v. Norwich Corpn.* [1971] Court of Appeal 614 and many other cases in similar vein leads me to this interpretation. The same authority and many other case law including *British Oxygen Co. Ltd. v. Minister of Technology* [1971] AC 610 states that any administrative authority must not apply its policy so rigidly without hearing what an individual applicant has to say are exceptional features of his case. While policy is an important guide, no authority must shut its eyes to an individual applicant.

Another aspect of law is that in all cases of depriving a man of his livelihood or in frustrating legitimate expectation, fairness is of paramount importance as emphasised in *Lau Liat Meng v. Disciplinary Committee* [1967] 2 MLJ 141. Bearing these principles of law in mind, I now wish to review the sole question, that is, whether the plaintiff's application for Sijil Annual should be withheld.

To decide this issue, it is not necessary for me to arrive at any finding as to the nature of the disputed partnership relationship. Whatever be my decision regarding the Sijil Annual, it does not prejudice the right of any party to seek recovery from the plaintiff if there is ample evidence of him holding out or being a partner otherwise a competent Court decides so.

These are hypothetical situations even though one year and few months have elapsed since the alleged partnership or association ceased with no sight of such claim yet. The first question for me to consider is whether the plaintiff is bound in all the circumstances to procure the Accountant's Certificate for his colleague Zaibuddin Ambak. Insofar as the plaintiff is concerned, he has accounted for all the moneys received from clients he attended, the primary object of legislation. In his affidavit sworn on 12 February 1993, among other things, the plaintiff stated that he never was a signatory to either the office account or clients' account of the Kuala Lumpur office and vice versa meaning the office of Zaibuddin Ambak who engaged auditors different from those of the plaintiff. He vehemently disclaims any definite arrangement of partnership, each lawyer minding his own practice alone.

I now pause to decide whether the defendant could have considered carefully the exceptional features of the plaintiff's reasons for not being able to produce his colleague's accounts. Its only response was the plaintiff did not comply with the Act.

Similarly, in his affidavits, the plaintiff alleged that the defendant denied justice by not making any enquiry at all. In this context, I am of the opinion after studying minutely the Legal Profession Act 1976 and The Solicitors Account Rules 1990 that the defendant has wide discretionary power to exempt the plaintiff from strict requirements of rules relating to submission of accounts.

The defendant ought to know that separate accounts are kept for two legal establishments of the same firm, the one in Kuala Lumpur and the other in Johor Bahru having accepted this format in the preceding year.

Although I feel that the plaintiff's second affidavit dated 10 May 1993 is too verbose and irrelevant in some instances, I cannot ignore what he swore in page 11, paragraph 16(b) of his second affidavit. He stated that there was at least one case of a lady lawyer being issued a Sijil Annual without the Accountant's Certificate probably for good reason but based on her undertaking or some private arrangements made between her and the Bar Council. Although the name of the lawyer was revealed during the hearing, the defendant's Counsel was not able to rebut the statement.

On review of the whole evidence, I am of the opinion that the defendant was merely relying on "holding out" as the reason for withdrawal of the Sijil Annual and did not consider the plaintiff's request with the care it deserves although it involves him being deprived of his livelihood indefinitely causing him loss of his career. The defendant has all the statutory power which it never exercised to check the plaintiff's accounts at its option even without a complaint.

There is no evidence that withholding the Sijil Annual will serve anyone's interest and will promote the cause of justice. If for any reason, it is adjudicated that the plaintiff has to pay for the "firm's" liability, of which I have no evidence